

**Central Administrative Tribunal
Ernakulam Bench**

OA No.816/2010 & OA No.80/2010

TUESDAY, this the13th..... day of September 2011

CORAM

Hon'ble Mr.Justice P.R.Raman, Judicial Member

Hon'ble Mr.K.George Joseph, Administrative Member

OA No.816/2010

Baby Rajan, aged 53 years

S/o P.S.Rajan

Assistant Accounts Officer

Office of the Accountant General (A&E) Kerala

Branch Thrissur, Residing at Puthanpurackal House

Village Office Road, Peruvankulangara

Ollur P.O., Trichur District.

Applicant

(By Advocate: Sh.T.C.Govindaswamy)

Versus

1. The Comptroller & Auditor General of India
Government of India
10, Bahadur Shah Zafar Marg
New Delhi.
2. The Accountant General (A&E) Kerala
Thiruvananthapuram.
3. The Sr. Deputy Accountant General (Admn.)
Office of the Accountant General (A&E) Kerala
Thiruvananthapuram.
4. The Deputy Comptroller & Auditor General of India
Office of the Comptroller & Auditor General of India
10, Bahadur Shah Zafar Marg
New Delhi.
5. Smt.Elizabeth Mammen
Accounts Officer
Office of the Accountant General (A&E) Kerala
Thrissur Branch, Thrissur.

Respondents

(By Advocate: Ms. Gayathri for Mr.V.V.Asokan (R1-4))

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Office of the Comptroller & Auditor General of India
10, Bahadur Shah Zafar Marg
New Delhi.
5. Shri V.Ravindran
Principal Accountant General (A&E)
Hyderabad (Andhra Pradesh).

Respondents

(By Advocate: Ms. Gayathri for Mr.V.V.Asokan (R1-4))

ORDER**By Hon'ble Mr.George Joseph, Member (A)**

The same applicant has filed OA No.80/2010 for a direction to the respondents to grant him the benefit of the 3rd financial upgradation under the Modified Assured Career Progression Scheme (MACPS) w.e.f. 01.09.2008 with all consequential arrears of pay and allowances, and OA No.816/10 for a direction to the respondents to grant him promotion as Accounts Officer with effect from the date of promotion of his junior.

2. The applicant in these OAs commenced service as an Auditor on 25.08.1978 under the respondents and having been promoted from time to time, he became an Assistant Accounts Officer with effect from 03.01.1994. Though many juniors of the applicant were granted benefits of the 3rd financial upgradation under the MACPS w.e.f. 01.09.2008, the applicant was denied the same. He approached this Tribunal through OA No.80/2010 challenging the adverse remarks retained in his ACR and also praying for a direction to the respondents to grant him the benefit of the 3rd financial upgradation. During the pendency of the aforesaid OA, the applicant was granted the financial benefit under the MACPS with effect from 01.09.2008. His representation for promotion as Accounts Officer was rejected vide Annexure-A2 order dated 16.06.2010 stating that the Departmental Promotion Committee had assessed his suitability and not found him fit for promotion. Hence this OA.

3. The applicant submitted that there was no reason why he should be found unfit in the light of Annexure-A3 order rejecting his request for expunging the adverse remarks recorded in his ACR. It stated that *"since the overall grading of Shri Rajan is "Good", remarks recorded in his ACR should not be a bar for granting him financial upgradation under MACPS or considering him for promotion to AO cadre, if otherwise eligible"*. The applicant is denied a fair and lawful consideration for promotion to the post of Accounts Officer resulting in denial of such promotion in preference to his juniors included in Annexure-A1.

4. In the reply statement filed by the respondents, it was submitted that the Departmental Promotion Committee (DPC) convened for the preparation of panel for promotion to the cadre of Accounts Officer for the year 2010 had assessed the applicant's suitability and had not found him fit for promotion as AO. The DPC enjoyed full discretion to devise its own methods and procedures for objective assessment of the

suitability of candidates who were to be considered by it. For granting financial upgradation under the MACPS, the bench mark of "Good" would be applicable till the grade pay of Rs.6600/- and if there was no mention of adverse entries in the ACRs of the applicant. Therefore, a review DPC was constituted and the benefit under the MACPs was sanctioned to the applicant with effect from 01.09.2008. The criteria for granting financial upgradation under MACPS and giving promotion are separate and distinct. They cannot be clubbed together as promotion to a higher post involves greater responsibility. An Accounts Officer has a greater responsibility to ensure that not only he, by personal example, should render superior performance, but also ensure that the staff reporting to him also renders superior performance. In the ACR for the period 2007-08, the Reviewing Officer had detailed the abdication of such higher responsibilities by the applicant. The applicant had abdicated the responsibilities entrusted to him and had caused substantial portion of State exchequer being put under Suspense. This had resulted in the Monthly Civil Accounts of the State being faulty, not being reflective of the true picture. The respondents referred to the decision of the Hon'ble Supreme Court in **Union of India and another Vs. S.K.Goel and others** reported in (2009) 1 SCC (L&S) 873, wherein it was held that interference by judiciary in DPC proceedings is permitted only if such proceedings are conducted illegally or in gross violation of Government's standing instructions and rules or there is mis-grading of confidential reports.

5. In the rejoinder statement filed, it was submitted that the DPC had not considered any of the ACRs except the ACR for the period 2007-08 and it was guided only the adverse remarks in that ACR. The DPC did not consider either the grading for each year or the overall grading for the purpose of assessment of suitability of the applicant for promotion to the post of Accounts Officer. The DPC had not chosen either to consider the existing grading or to provide an independent

grading to assess the fitness of the applicant for promotion. As per the understanding of the applicant, the DPC which met for considering the promotion of the applicant, and the DPC which met to consider the applicant for grant of MACP benefit, was essentially the same and it was thus clear that the DPC was guided by ulterior considerations and proceeded on the premise that a bench mark "good" or "very good" is not sufficient to consider the fitness of an individual for promotion. He further submitted that there were a number of additions/corrections/deletions/erasures etc. and these are not seen countersigned by the authority who made such correction/deletion/addition/erasures etc. The applicant's participation in the so-called agitation, in Nov. 2007, had weighed in the mind of the DPC to declare the applicant "unfit" for promotion. The DPC is bound to indicate in its proceedings the methods and procedures adopted by it for objective assessment when they met to consider the case of the applicant and his juniors. It was very much evident from the minutes of the DPC meeting that the DPC had not devised any method of its own or procedures for objective assessment of the applicant's case or that of any others who were considered by the DPC. It had not even chosen to grade the applicant as "good" or "very good". Therefore, the entire action of the DPC in denying the applicant a fair consideration for promotion and holding him as "unfit", is totally arbitrary, discriminatory and opposed to the directions and guidelines in this regard. The criteria for grant of financial upgradation and for grant of promotion are essentially one and the same.

6. We have heard Mr.T.C.Govindaswamy, learned counsel for the applicant and Ms. Gayathri for Mr.V.V.Asokan, learned counsel for the respondents 1 to 4 and perused the records.

7. OA No.80/2010 has become infructuous as the applicant has already been granted the 3rd financial upgradation under the MACPS

w.e.f. 01.09.2008 as per order dated 21.07.2010 at Annexure A-4 in OA No.816/2010.

8. The applicant was not promoted along with his juniors as Accounts Officer as per order at Annexure-A9 in OA No.816/2010. The stand of the respondents as regards denial of promotion to the applicant as Accounts Officer is that the concerned DPC which could devise its own method and procedure for objective assessment of suitability of a candidate who was to be considered for higher grade, duly considered the suitability of the applicant for promotion and did not find him fit for promotion to the higher grade of Accounts Officer, on 04.12.2009. The Deputy Controller & Auditor General of India (Respondent No.4) in his order dated 1st April 2010 rejecting the representation of the applicant against the adverse entries recorded in his ACR for the period April 2007 to February 2008 stated as under:-

"4. I have gone through the adverse remarks recorded in the ACR of Shri Baby Rajan, Assistant Accounts Officer for the period from April 2007 to February 2008 as well as representation of the officer and the comments of the Reporting Officer and Reviewing Officer thereon. Performance of the officer during the reporting period is reflected in his ACR. While the shortcomings were recorded in Petitioner's ACR for the period in question, he was also appreciated for the good work done by him. The Petitioner had participated in strike and that adversely affected the work of the Section. Petitioner, being a Gazetted Officer and holding a responsible position, should have set an example for his subordinates. I find no justification to expunge the remarks recorded in the ACR of the Petitioner and therefore, it may be retained. However, the bench mark of grading for granting financial upgradations under MACPS is "Good" and so is the case with promotion to the AO cadre. Since, the overall grading of Shri Rajan is "Good", remarks recorded in his ACR should not be a bar for granting him financial upgradation under MACPS or considering him for promotion to AO cadre, if otherwise eligible."

(emphasis supplied)

9. It is clearly stated that the bench mark for granting financial upgradation under the MACPS as well as for promotion to the cadre of Accounts Officer is "GOOD" and that since the overall grading of the applicant was "Good", the adverse remarks recorded in his ACR would not be a bar for granting him financial upgradation under the MACPS or for considering him for promotion to the cadre of Accounts Officer.

The applicant has already been granted the 3rd financial upgradation under the MACPS as he is having the bench mark of "Good". In the light of the observations of the Deputy Controller & Auditor General of India, there is no reason why the applicant cannot be promoted as Accounts Officer if he can be given the 3rd financial upgradation under the MACPS; the bench mark for financial upgradation under the MACPS and for promotion to the cadre of AO being "Good". Moreover, the contention of the applicant that it was the same DPC that had considered his case for grant of MACPS benefit is not refuted by the respondents. The respondents have not cared to explain how the criteria for granting financial upgradation under the MACPS are different from the criteria for giving promotion. That there are separate criteria in the matter of financial upgradation under the MACPS and promotion as Accounts Officer, as stated by the respondents in their reply statement, contradicts the statement of the Deputy Controller & Auditor General of India in Annexure-A3 order dated 01.04.2010. The respondents have not cared to produce any document to substantiate their claim. As per the records available, the bench mark for granting financial upgradation under the MACPS and for granting promotion as Accounts Officer is "Good". The applicant satisfied the bench mark and is, therefore, clearly eligible for promotion as Accounts Officer with effect from the date his immediate junior was promoted as Accounts Officer.

10. Out of the five ACRs of the applicant, only the ACR for the period from April 2007 to Feb 2008 carries adverse remarks at the level of the Reviewing Officer. The adverse remarks recorded by the Reviewing Officer are extracted as under:-

"4. General remarks with specific comments about the General remarks given by the Reporting Officer and remarks about the meritorious work of the Officer including the Grading.

"The Officer is very efficient, hard working and knowledgeable. However, he

was found to have unauthorizedly absented from the section during the strike period in November, 2007 for which Dies-non orders are to be issued (Note approved by DAG (A&E) Thrissur on 3.3.08. This is in addition to the memo already issued in Jan. 08 for his contribution to the delay in the compilation accounts for October, 2007.*

** He refused to do the work during the strike period thereby necessitating keeping of crores and crores of amount under suspense causing extreme embarrassment to the office. He also did not take initiative to ensure normal working in the Section during the strike period and therefore lacked leadership qualities. As such the grading given by the Reporting Officer is not agreed to. At best he can be graded as "Good" only"*

11. The above adverse remarks make a mention of an order of "dies-non", which is yet to be issued to the applicant. The statement that his refusal to do the work during the strike period resulting in keeping crores of amounts under suspension is rather vague. The Reviewing Authority appears to be more knowledgeable about the performance of the applicant than the Reporting Officer. The Reporting Officer had recorded in the confidential report under review that "during 11/07 his work was not completed in time and he was issued with a memo for that. However, the arrears were cleared in 12/07". This statement seems to have been totally ignored by the Reviewing Officer. Moreover, there are erasures/additions/corrections in the remarks of the Reviewing Officer, which are not authenticated. Participation in the strike is the only adverse remark. In spite of this adverse remark, the Reviewing Officer had graded the applicant as "Good". The DPC has failed to appreciate the above material points.

12. It is true that the DPC can devise its own method and procedure for objective assessment of the suitability of the candidates to be considered by it. But the minutes of the DPC meeting held on 04.12.2009 to draw up a panel of Assistant Accounts Officers for promotion to the grade of Accounts Officer during the panel year 2010 does not reveal the method and procedure for objective assessment devised by the DPC, if at all it had done so.

13. At Para 14 it is stated as under:-

"14. The Committee noted that the adverse remarks in the CR of Shri Baby Rajan, Asst. Accounts Officer during the period 2007-2008 were ordered to be retained by the competent authority. After carefully considering his service records and also the fact of the adverse remarks in his CR, the Committee found him unfit to be empanelled for promotion as Accounts Officer during the panel year 2010."

14. There is nothing adverse in the service records of the applicant; otherwise the DPC would have stated it. Therefore, on the basis of the adverse remarks for the period 2007-08, the Committee found the applicant as "unfit" for empanelment as Accounts Officer. As stated earlier, the DPC has failed to note that in spite of the adverse remarks, the Reviewing Officer had down-graded the applicant's performance as "Good" only, which is the bench mark for promotion. The DPC is expected to make an objective and fair assessment of the candidates to be considered for promotion. The action of the DPC in going merely by the adverse remarks without considering the additions/corrections/erasures etc in the above remarks and in ignoring positive remarks and in particular the overall grading as "Good" which was made by the Reviewing Officer after taking into consideration the participation of the applicant in the strike, is arbitrary and, therefore, illegal. When the criteria for grant of financial upgradation and for promotion are essentially one and the same, the adverse remarks recorded by the Reviewing Officer for 2007-08 cannot be the sole criterion to grade the applicant as "unfit" for promotion.

15. It is also surprising that the respondents have granted the financial benefits of promotion under the MACPS, which is meant for ameliorating the hardship caused by stagnation on account of delay in promotion for want of posts. In the instant case, there is no lack of availability of vacancy for promoting the applicant as Accounts Officer. After giving the financial benefits, he is being deprived of an opportunity of discharging the higher responsibilities of Accounts Officer, which is against the spirit of MACPS and a clear violation of

the guidelines for making an objective assessment of the eligible candidates for promotion.

16. In the light of the above discussion, we declare that the applicant is entitled to be considered and granted the benefit of promotion as Accounts Officer in the pay band of Rs.9300-34800 with Grade Pay of Rs.5400/- with effect from the date of promotion of his immediate junior in Annexure A-1 order. The respondents are directed to consider the promotion of the applicant as Accounts Officer within a period of one month and grant him all consequential benefits of promotion, if he is found fit for promotion. Annexure A1 to the extent it excludes the applicant's name is set aside. OA No. 816/2010 is allowed as above. OA No. 80/2010 is dismissed as infructuous.

17. No order as to costs.

(K.George Joseph)
Administrative Member

(Justice P.R.Raman)
Judicial Member

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